

**BOARD OF ENVIRONMENTAL PROTECTION**  
**Meeting Minutes**

October 16, 2008

A meeting of the Board of Environmental Protection was held on Thursday, October 16, 2008 at the Holiday Inn / Ground Round, Augusta, Maine. Ernest W. Hilton, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

**Board:** Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, P. Andrews Nixon, Matt Scott, Lissa Widoff and Nancy Ziegler.

Absent: Don Guimond, Sue Lessard

<b><u>Staff:</u></b>	Bureau of Air Quality	Ron Severance
	Bureau of Air Quality	Tammy Gould
	Bureau of Land and Water Quality	Hetty Richardson

**Others:** David P. Littell, Commissioner  
Pete LaFond, Assistant Attorney General  
Cindy Bertocci, BEP Executive Analyst  
Terry Hanson, Administrative Assistant

***(Meeting adjourned at approximately 12:30 p.m.)***

**I. DEPARTMENTAL**

**A. COMMISSIONER'S COMMENTS:** Commissioner David Littell reported the following:

Mercury Export Ban Bill: President Bush recently signed the bill which bans shipment of recycled mercury to third world countries. This will become effective in 2010 and requires the establishment of a federal repository (the Oak Ridge Lab facility was specifically exempted from being considered as a repository). This bill was supported by several entities such as the New England Governor's Association, Environmental Council of States and the National Association of Clean Air Agencies (NACAA).

HoltraChem: The Department has initiated discussions with HoltraChem concerning the draft clean-up order. No timeframe has been identified for issuing this document.

Pharmaceuticals: The Department has been working with the Maine Drug Enforcement Agency (DEA) on a product stewardship pilot program to take back unused pharmaceuticals. Currently, the Maine DEA and DEP are developing a management system for this program. This initiative has been test-run in a few communities statewide, providing information on the use of mailers for returning unused prescriptions or by providing drop off locations at specific pharmacies. Any mail returns are directed to the DEA. This program reduces the amount of chemicals entering the natural environment (often through disposal by flushing into septic systems or municipal wastewater collection systems), reduces hazards of accidental ingestion of medications by small children, and may limit the number of home break-ins by individuals seeking drugs.

Board member Ernest Hilton asked why these drug retrieval programs throughout the State have been initiated by the DEP.

*Commissioner Littell clarified that these drug collection initiatives are the result of the combined efforts of the DEP, DEA and Maine Center for Disease Control.*

Board Member Wing Goodale asked if incineration has been identified as the preferred disposal method, and whether incineration is adequate to protect public health and ambient air quality.

*Commissioner Littell explained that most prescription drugs are organic compounds and readily incinerated; however, some medications contain metallic compounds and incineration may result in some ambient air impacts.*

*Nevertheless, incineration is a safer method of disposal than current practices.*

Juniper Ridge Landfill: The Department has a pending application for license amendment concerning the Juniper Ridge landfill facility (formerly known as the West Old Town Landfill). The request is for approval to accept CDD (construction demolition debris) bypass from Casella's Westbrook CDD processing facility. The Landfill Advisory Committee has submitted a request for a DEP or BEP public hearing on the license amendment. The Department is considering these requests.

Board Chair Ernest Hilton asked about the timing of a Department decision on the request for public hearing.

*The Commissioner indicated that a decision concerning the request for a hearing is anticipated early next week. He noted that the nature of the amendment does not meet the conflicting technical information criterion for conducting a hearing; however, because of the public interest, a hearing may be recommended by staff.*

The Board Chair asked members about their level of interest in the application. The Commissioner suggested that staff prepare a briefing on this amendment for the November 6<sup>th</sup> regular meeting.

**QUESTIONS:**

Board member Matt Scott asked the Commissioner what the Department has learned from its meetings on possible revisions to the Site Law, and noted that his concern is that the law does not address fragmentation of wildlife habitat.

*Commissioner Littell explained that an interagency group is working on a number of issues (e.g. sprawl and greenhouse gas/carbon footprint). The Department also anticipates one or two bills in the Legislature seeking to amend the Site Law. Massachusetts is currently doing a significant review of the carbon footprint when siting projects, but Maine is not able to conduct a similar initiative because of staffing.*

Board member Goodale asked about the status of LNG projects.

*The Commissioner informed Board members that he has no new information on the status of the Downeast LNG and Quoddy Bay proposals. Downeast has not filed an application and Quoddy Bay remains on hold.*

**B. COMMENTS FROM THE BEP CHAIR: NONE**

**C. EXECUTIVE ANALYST COMMENTS:**

The Board's November 6<sup>th</sup> meeting agenda will include a workshop for the Board to discuss the content of the Board's Report to the Legislature (due January 15, 2009).

Law Court Decision. The Maine Supreme Judicial Court (Law Court) recently upheld the Board's decisions dismissing petitions to revoke, modify, or suspend the water quality certifications for several hydropower projects. The Court found that the Board has the authority to act in response to a petition, but is not required to do so. A decision by the Board to take no action is discretionary with the Board, and not subject to judicial review. Any future amendments to Chapter 2 will reflect this decision.

**D. BOARD CALENDAR: Reviewed**

**E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING: Reviewed**

**F. EXECUTIVE SESSION: None**

## **II CONSENT AGENDA ITEMS**

None

## **III. Regular Agenda**

1. CHAPTER 335, SIGNIFICANT WILDLIFE HABITAT / AMENDMENT (post to 30-day written public comment)

Staff: Hetty Richardson, Bureau of Land and Water Quality

The Board voted (8-0-0-2) on a motion to post amendments to Chapter 335, Significant Wildlife Habitat, to a 30-day written public comment period. Amendments to this rule include updates to rule text for consistency with statutory changes, correct references to other rules provide additional guidance on mitigation, clarify compensation requirements, and establish a 3 region approach to the identification of significant vernal pool habitat recognizing seasonal differences with Maine's geography. December 1, 2008 is the deadline for submittal of written public comments. The Board voted pursuant to 38 M.R.S. Section 341-D(1-B) and 480-A through 480-FF.

*Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, P. Andrews Nixon, Matt Scott, Lissa Widoff and Nancy Zielger voted to support the motion. Board members Don Guimond and Sue Lessard were absent.*

2. CHAPTER 137, EMISSION STATEMENTS // AMENDMENT (adoption\*\*\*)

Staff: Tammy Gould, Bureau of Air Quality

The Board voted (8-0-0-2) on a motion to adopt amendments to Chapter 137, Emission Statements which include changes to enhance definitions, apply emission inventory reporting requirements to licensed facilities only, update the rule concerning data elements and standards for consistency with National Emissions Inventory in conjunction with guidance from the US Environmental Protection Agency, and move the reporting date. The Board voted pursuant to 38 M.R.S. Section 341-D(1-B), 575, 585-A, and 585-C.

*Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Ernest Hilton, P. Andrews Nixon, Matt Scott, Lissa Widoff and Nancy Zielger voted to support the motion. Board members Don Guimond and Sue Lessard were absent.*

**The Board Conducted a Public Hearing beginning at 10:00 a.m. in The Matter of:**

CHAPTER 150, CONTROL OF EMISSIONS FROM OUTDOOR WOOD BOILERS / AMENDMENT

CHAPTER 160, OUTDOOR WOOD BOILER REPLACEMENT AND BUY BACK PROGRAM / NEW